Court No.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 1522 of 2001

Sunil Kumar & others …… **Appellants.**

Versus

Sakir Ahmed
And another. …… **Respondents.**

Sri Siddhartha Sah, learned counsel for the appellants.
Sri Dinesh Chauhan, learned counsel for the respondent.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** *against the* judgment and Award dated 19.07.2001 passed in M.A.C. Case No. 189 of 1999, Sri Sunil Kumar and others Vs. Shakir Ahmad and another, by Motor Accident Claims Tribunal/Additional District Judge, III F.T.C. Nainital (**in short the Tribunal),** whereby the learned Tribunal has allowed the claim petition and has awarded Rs. 1,96,400/- as compensation in favour of the claimant-appellants as against O.P. No.2 respondent no.2, along with interest @ 9% per annum, as mentioned in the impugned order, under Section 166 of the Act. Aggrieved, the claimant-appellants have come up in appeal with a prayer to enhance the quantum of compensation and rate of interest, on the ground that the learned Tribunal has failed to appreciate the evidence regarding income of the deceased and the findings of the learned Tribunal are erroneous.

Brief facts, giving rise to the present appeal are that the claimant-appellants have preferred a claim petition under Section 166/140 of the Act for the death of their father Kishan Lal (***the deceased***), who died in a motor accident as a result of injuries sustained by him on 25.8.89, alleging therein that the deceased was

going for his duty towards Shish Mahal, Kathgodam on the main road and was stepping very cautiously on his left side. At about 7.15 a.m., when the deceased reach in front of Roadways Depot, then a Maruti Van No. U.P. 02 A/3636, driven very fast rashly and negligently came from the opposite direction and hit the deceased, with the result injured Kishan Lal sustained grievous injuries on his person and was rushed to the hospital; but in the way, he succumbed to his injuries. It has also been alleged that at the time of accident, Dharmendra, Ramu Bharati and son of the deceased Sunil were present. Report was lodged with the police by Ramu Bharati at police out-post Kathgodam. Deceased was aged 52 years and was employed in Municipality Haldwani and was getting salary worth employed in Municipality Haldwani and was getting salary worth Rs. 4906/- per month. The deceased was spending Rs. 4000/- p.m. towards his family. Hence the petition has been filed.

O.P.No.1-owner of the vehicle has contested the petition by filing his written statement. He has admitted the accident; but has alleged that the motor accident was not the result of rash and negligent driving by the driver of the vehicle involved in the accident. It has been further alleged that the vehicle in question was duly insured with the O.P.-respondent no. 2, therefore, the liability, if any, to pay the compensation rests on the Insurance Company. O.P.-Respondent No.2 has also contested the claim petition by filing its separate written statement and has admitted the insurance of the vehicle involved in the accident with it. It has been pleaded that the Insurance Company was not informed of the accident by the claimants and that driver of the vehicle has not been impleaded as party to the proceeding. It has been stated that the Insurance Company is only liable to pay compensation if all necessary documents relating to the vehicle are proved and it is shown that violation of conditions of Policy has not been committed. Lastly, the quantum of compensation claimed has been challenged.

On the pleadings of the parties, the learned Tribunal framed as many as four Issues in the Case. **Issue No.1** related to rash and negligent driving by the driver of the offending vehicle resulting into injuries and consequent death of the deceased on the alleged date and time. **Issue No.2** related to non-joinder of driver of Maruti Van in question. **Issue No.3** related to holding of valid driving licence by the driver of the offending vehicle and **Issue No. 4** related to compensation and relief. In support of their case, the claimants have filed documentary evidence and has also adduced two witnesses in oral evidence. On the other hand, the opposite parties-respondents have neither filed any documentary evidence, nor have examined any witness.

The learned Tribunal, after hearing both the parties, and considering the evidence on record, found on Issue No.1 that from the testimony of P.W.1, Sunil Kumar, and alleged independent eye witness P.W.2 Ramu Bharati coupled with the written report and Chik F.I.R. as also Post Mortem Report, it has been proved that the death of the deceased was result of injuries sustained by him due to rash and negligent driving by the driver of the Maruti Van No. UP 02 A-3636. Accordingly, the issue was decided in favour of the claimant-appellants. On Issue No.2, the learned Tribunal was of the view that for an act done by a servant in the course of his employment, the owner is responsible for the fault, therefore, the claim petition is not bad for non-joinder of driver of the offending Maruti Van. On Issue No.3, the learned Tribunal held that paper no. 26-C is the photocopy of driving licence of the driver Mohd. Mohin Malik, issued on 14.9.1990 and the same was in force on the date of accident. Opposite Parties-Respondents have not disputed the veracity of driving licence in rebuttal before the Tribunal. On Issue No.4, the learned Tribunal after discussing the evidence elaborately, has accepted that the income of the deceased was Rs. 4906/- in all per month on the basis of the salary certificate paper no. 21-C on record, but the Tribunal has taken amount of Rs.4000/- per month as monthly income of the

deceased. The age of deceased was undisputedly 52 years as stated on oth by P.W. 1 Sunil Kumar and the same has not been disputed by the O.P. –respondents. The learned Tribunal also found that all the claimants are entitled to get compensation. The learned Tribunal after working out the personal expenses of the deceased as Rs. 1300/- per month, he has determined the dependency at Rs. 2700/- per month. The learned Tribunal has applied multiplier of 6 on the ground that he would have served for another six year had he been alive. Accordingly, the Tribunal has worked out total compensation for the death of the deceased at Rs., 1,94,400/-. In addition to it, the learned Tribunal has awarded sum of Rs. 2000/- towards funeral expenses and ultimately, decreed the claim petition for compensation worth Rs. 1,96,400/- along with interest @ 9% per annum, as mentioned in the impugned order.

We have heard learned counsel for the parties and have carefully gone through the entire material before us as well as the impugned judgment and award.

The only argument advanced on behalf of the appellants before us is that despite the evidence about income of the deceased proved on record, the learned Tribunal has fallen in error while applying multiplier of 6 holding that the deceased would have served in the department for another six years only. Out attention has been drawn to retirement age 60 years of the employees working in the Municipal Boards, as was the case of the deceased, therefore, suitable multiplier ought to have been applied by the Tribunal in determining the total amount of compensation. Having gone through the evidence on record as narrated by us in the earlier part of the judgment and considering the peculiar circumstances of the case, we find force in the argument of the learned counsel for the appellants. It is settled principle of law that the quantum of compensation should be just and proper. On the record, it has been established that the deceased was getting salary at the rate of Rs. 4906/- per month. It can safely be taken that the

deceased would have spent 1/3rd towards his personal expenses. After deducting this amount, the balance comes to 4,906-1635 = 3271. The annual loss of dependency thus comes to Rs. 3271 X 12 = 39,252. In the peculiar circumstances of the case, when the deceased has died while in service, the widow must have been entitled to get salary amount of the deceased for certain period, we are of the opinion that multiplier of 7 shall be sufficient to meet the ends of justice for determination of just and proper compensation. Accordingly, the total compensation thus arrived at comes to 39,252 x 7 = 2,74,764/- and this amount can be safely rounded up to 2,75,000/-. From the perusal of the impugned judgment and order, we find that no amounts towards loss of love and affection and loss of estate have been awarded, therefore, we hold that the amount of Rs. 5000/- for loss of love and affection be also awarded to the claimants. Thus, the claimant-appellants are entitled to get total sum of **Rs. 2,80,000/-** (two lacs eighty thousand) as compensation for the death of the deceased. To this extent, the quantum of compensation for the death of the deceased. To this extent, the quantum of compensation awarded by the learned Tribunal shall stand modified. The learned Tribunal has awarded appropriate interest of 9% per annum on the compensation amount, therefore, the finding on this count does not require any interference.

Accordingly, the appeal is allowed. The judgment and award, under appeal, stands modified to the above extent. No order as to costs.

18.08.2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**

RCP